



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: December 18, 2008
To: Interested Person
From: Rachel Whiteside, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-104913 ENM

GENERAL INFORMATION

Owner: Stanley Culver
PO Box 598
Gladstone, OR 97027

Applicant: Charles Eaton,
CSA Consulting Engineers
2895 Beaver Creek Rd
Oregon City, OR 97045

Site Address: 5010-5024 SW Slavin Rd

Legal Description: TL 6700 BLOCK 3, BINGHAM ADD; BLOCK 17 LOT 17 INC PT VAC ST LOT 18 INC PT VAC STS, TERWILLIGER HMSTD; TL 6800 4.35 ACRES, SECTION 15 1S 1E; TL 6900 2.77 ACRES, SECTION 15 1S 1E

Tax Account No.: R078800180, R825804370, R991150290, R991150740

State ID No.: 1S1E15BC 06700, 1S1E15BB 08500, 1S1E15BC 06800, 1S1E15BC 06900

Quarter Section: 3529

Neighborhood: South Portland NA., contact Jim Davis at 503-248-9820.

Business District: None

District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.

Plan District: None

Zoning: R2c – Multi-Dwelling Residential 2,000 with an Environmental Conservation Overlay Zone

Case Type: ENM – Environmental Review with Modifications

Procedure: Type II – an administrative decision with appeal to the Hearings Officer

Proposal:

The applicant proposes to construct a multi-story, 36-unit condominium project on the vacant portion of an existing multi-dwelling development. The project includes structured parking for the new units in four below-grade stories. The building footprint for the proposed development is 17,401 square feet. Approximately 11,039 square feet of the proposed development is inside the environmental conservation zone, of which 2,448 square feet is temporary disturbance for construction.

The structure is proposed on a walled foundation, built on the street property line, with cut and fill limited to the building pad areas. Stormwater treatment will be provided by a flow through planter with an overflow pipe to the adjacent combined sewer system. The proposal also includes extending the public water main down SW Slavin Road to serve the new development and public street improvements along the site frontage immediately abutting the new structure. Stormwater from proposed right-of-way improvements would be treated by a vegetated swale and connected to the existing drainage ditch in Slavin Road. The proposed disturbance area within the right-of-way is 9,861 square feet of which 5,900 square feet is temporary disturbance for the creation of ditches and water quality swales.

A total of 35 trees will need to be removed within the environmental zone to accommodate the proposed development. The applicant proposes to replace the lost trees with 64 new trees and 81 shrubs. Another 90 shrubs and 1,440 ground cover plants are proposed in the temporary disturbance areas. An ecoroof over 7,418 square feet of the building is also proposed to reduce stormwater runoff.

A Type II Environmental Review is required because the proposed building cannot meet all of the general development standards in Section 33.430.140 and the right-of-way improvements cannot meet all of the standards in Section 33.430.175. Additionally, the applicant has requested three Modifications to site related development standards in order to better meet the environmental review requirements. The requested modifications include:

- Increasing the maximum height as shown on the elevation drawings;
- Increasing the maximum building length from 100 feet to 208 feet; and
- Reducing the side building setback along the north side from 14 feet to 8 feet.

Modifications are considered as part of the environmental review process.

Note: The site is also undergoing a property line adjustment so that the proposed development can eventually sit on its own lot. The setback modification relates to the proposed property line, although the property line adjustment is not subject to this environmental review.

Relevant Approval Criteria:

To be approved, this proposal must comply with the criteria of Title 33. The applicable criteria for the proposed street improvements and new condominium building within the Environmental Conservation overlay zone are found in:

- **Section 33.430.250 A** Public safety facilities, **roads**, driveways, walkways, outfalls, **utilities**, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments;
- **Section 33.430.250 E** Other Development in the Environmental Conservation zone; and
- **Section 33.430.480** Modifications Which Will Better Meet Environmental Review

SITE INFORMATION

Site and Vicinity: The proposed building site is the vacant portion of a larger ownership located at the south end of SW Slavin Road, just west of Interstate 5. The property surrounding the site on 3 sides is owned by the Oregon Department of Transportation. Lots to the north are developed with multi-dwelling development, similar to what exists on the rest of this site.

The building site is vegetated with a mixture of deciduous and coniferous trees dominated by a canopy of maple trees. Existing trees range in size from 8-36 inches (dbh). The understory is dense, though it is beginning to suffer from an increase in invasives, such as ivy. The property contains a seasonal drainageway fed by a storm drainage culvert from under SW Slavin Road. A second open drainageway crosses through the existing development to the north. Neither drainageway is identified within the *Southwest Hills Resource Protection Plan* and Bureau of Environmental Services maps indicate that the drainage runs into a pipe just east of the site in the I-5 right-of-way.

Infrastructure: Southwest Slavin Road is a 60-foot wide right-of-way with a 20-foot wide paved roadway. There are no curbs or sidewalks and a barricade currently blocks the street at the entrance to this site. A combined public sewer main bisects the site running approximately parallel to the drainageway in a 20-foot wide public sewer easement. There is a drainage ditch on the southwest side of Slavin Road that connects to the combination line traversing the site. An 8-inch diameter water line is located in SW Slavin Road, north of the construction site.

Environmental Resources: Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less sensitive. The purpose of this land use review is to ensure compliance with the regulations of the environmental zones.

The application of the environmental overlay zones is based on detailed studies that have been carried out within ten separate areas of the City. Environmental resources and functional values present in environmental zones are described in environmental inventory reports for these study areas. The project site is mapped within the *Southwest Hills Resource Protection Plan* as Site #114 – Terwilliger Parkway Central. Resources and functional values of concern on the project site include wildlife habitat, forest, seasonal creeks, and open space.

Zoning: The R2 zone allows multi-dwelling residential development up to a maximum density of one unit per 2,000 square feet of site area, and requires a minimum density of one unit per 2,500 square feet of site area. The provisions of this zone allow the proposed use; these provisions are not specifically addressed through this Environmental Review except where a modification has been requested.

Land Use History: City records indicate the following land use reviews for this site:

- **PC 5698** – Denial of a zone change request.
- **LUR 96-00617 VA** – Approval of a street vacation for partial street remnants.
- **LUR 99-00230 SU** – Approval of preliminary land division approval to create 6 lots. The approval is void because a final plat was not submitted within the required timeline.
- **LUR 01-00021 SU** – Void case for a land division request.

PUBLIC REVIEW COMMENTS

Agency and Neighborhood Review: A Notice of Proposal in your Neighborhood was mailed on April 11, 2008.

1. Agency Review: Several Bureaus and agencies have responded to this proposal. Exhibits E contain additional details. The comments are addressed under the appropriate criteria for review of the proposal.

2. Neighborhood Review: One written response has been received from the Neighborhood Association in response to the proposal. The South Portland Neighborhood Association is opposed to the proposed development for the following reasons:

- The perceived stability of the hill and lack of geotechnical information;

- The safety of existing residents on the roadway due to the proposed nose-in parking;
- No mitigation for the Red Electric Trail which has been approved by Council;
- Not enough detail regarding the maximum height request; and
- Modifications of building length and setback.

City's Response:

- *The applicant has provided geotechnical information to the satisfaction of the Site Development review section of the Bureau of Development Services. See the findings, below, for further discussion.*
- *The Bureau of Transportation Engineering and Development has reviewed the proposed improvements to the public right-of-way and has no objections.*
- *A public recreational trail is not identified on the official zoning maps. The Red Electric Trail Study has been adopted, but the final alignment has not been adopted and added to the official zoning maps. The Bureau of Development Services cannot enforce a trail alignment that is only conceptually approved, however based upon the Trail Study it does not appear that the proposed development will interfere with the recommended alignment or any of the alternative alignments.*
- *The height, building length, and setback modifications are discussed later in this report under the approval criteria of Section 33.430.280, Modifications Which Will Better Meet Environmental Review Requirements.*

PROJECT ANALYSIS

Impact Analysis and Mitigation Plan: The applicant provided a full description of the proposal as summarized on pages 1-2 of this report. This section discusses developments other than the one proposed that were considered by the applicant. Additionally, the following describes the construction management, mitigation, and monitoring strategy, as proposed by the applicant. These are described in detail in the applicant's narrative (Exhibit A.1, A.3 and A.4 in the Application Case File).

Development Alternatives: The applicant described the following alternatives, as required by Zoning Code approval criterion 33.430.250 E.2:

Alternatives Analyzed		
Option #	Option Description	Disturbance Area (SF) in resource area
1	10 multi-story 26'x39' townhomes, 5 driveways	15,600
2	20 multi-story 26'x39' townhomes, 6 driveways	48,700
3	12 multi-story 22'x41' townhomes, 6 driveways	15,800
4	22 multi-story 22'x41' townhomes, 4 driveways	35,900
5	3 – 80'x80' 4-story buildings	19,700
6	2 – 90'x84' 4-story buildings	21,700
7	156'x84' & 46'x105' 5-story buildings, all under-structure parking	14,400
8	156'x84' 7-story building, under-structure parking & exterior parking	14,400
9	156'x84' 7-story building, NW side and under-structure parking	11,300
10 (Proposed)	17,402 sf building footprint	13,487

The proposed 20-foot roadway and 6-foot sidewalk are the minimum allowed by the Portland Office of Transportation. The remaining area between the roadway and the property line would be disturbed for construction regardless of whether or not on-street parking was proposed. By providing head-in on-street parking, the project includes visitor parking without expanding the footprint of the building or raising the ends of the building an additional story.

Proposed Construction Management Plan (CMP): The applicant proposes placement of silt fences around the perimeters of the construction disturbance area as shown on the CMP prior to the commencement of construction activities. All trees to remain within the disturbance area will be flagged and have temporary construction fencing placed around them. All areas beyond the fencing will be protected to the maximum extent possible. The sediment fence will remain in place until all construction activities are completed. Any damage done to protective measures will be repaired in accordance with City standards.

Initial staging will be within the right-of-way with additional staging within the building footprint areas once excavated. The existing terrain dictates an inside-out construction method where all staging and construction activities will be primarily inside the building footprint, allowing for the temporary disturbance areas outside the footprint to be limited to 10 feet. The site is aided by the availability to use the existing right-of-way of SW Slavin Road because of the lack of traffic on the street.

Applicant-Identified Development Impacts: The applicant has identified 11,039 square feet of permanent disturbance area for the building, stormwater facility, utility construction, and 2,448 square feet of temporary disturbance around the structure necessary for construction. An additional 3,960 square feet of permanent disturbance and 5,901 square feet of temporary disturbance within the Slavin Road right-of-way is necessary for roadway access and improvements. A total of 35 trees are proposed for removal within the environmental conservation zone, although seven of these trees are within the transition area. The only impact identified by the applicant is loss of open space created by the existing forested habitat.

Proposed Mitigation: The applicant's proposed mitigation measures are as follows:

- 1) Removal of non-native plants within the building site and mitigation area;
 - 2) Planting of native trees and shrubs throughout the ownership to replace cut trees;
 - 3) Planting of native shrubs and ground cover plants within the temporary disturbance areas; and
 - 4) A 7,418 square foot ecoroof to reduce stormwater impacts. (Exhibit A.10, A.11 and C.5).
- See Exhibit C.4 for planting location, quantity, and plant materials to be used.

Proposed Monitoring Plan for Mitigation: The property owner will be responsible for the monitoring and maintenance of the mitigation plan. The applicant proposes that the property owner will inspect the plantings six months after the initial planting to check for the survival and vigor of the planting. Any dead or dying plants will be replaced in kind. Plantings will be checked again after one and two years, after the end of the growing season, for the survival and vigor of the plantings. Any dead or dying plants will be replaced in kind. Generally, after two years, all plants should be well established.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR ENVIRONMENTAL REVIEW

33.430.250 Approval Criteria

An environmental review application will be approved if the review body finds that the applicant has shown that all of the applicable approval criteria are met. When environmental review is required because a proposal does not meet one or more of the development standards of Section 33.430.140 through .170, then the approval criteria will only be applied to the aspect of the proposal that does not meet the development standard or standards.

Findings: The approval criteria which apply to the proposed right-of-way improvements are found in Section 33.430.250.A.1 and A.3. The criteria that apply to the remainder of the development are found in Section 33.430.250.E. The applicant has provided findings for these approval criteria and BDS Land Use Services staff have revised these findings or added conditions, where necessary to meet the approval criteria.

The proposed development does not meet the following development standards due to the disturbance area, tree removal and street improvements:

- 33.430.140.A – disturbance area
- 33.430.140.J – tree removal
- 33.430.175.A – roadway widths
- 33.430.175.B – right-of-way disturbance area

33.430.250 A. Public safety facilities, roads, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments. Within the resource areas of environmental zones, the applicant's impact evaluation must demonstrate that all of the general criteria in Paragraph A.1 and the applicable specific criteria of Paragraphs A.2, 3, or 4, below, have been met: Note that since this activity is not a Public Safety Facility, Land Division, Planned Development, or Planned Unit Development and does not require a Property Line Adjustment subject to environmental review, the criteria in Sections 33.430.250 A.2 and A.4 do not apply and are not included.

33.430.250 E. Other development in the Environmental Conservation zone or within the Transition Area only. In Environmental Conservation zones or for development within the Transition Area only, the applicant's impact evaluation must demonstrate that all of the following are met:

- E.1. Proposed development minimizes the loss of resources and functional values, consistent with allowing those uses generally permitted or allowed in the base zone without a land use review;**
- A.1. General criteria for public safety facilities, roads, driveways, walkways, outfalls, utilities, land divisions, and Planned Developments;**
- A.1.a Proposed development locations, designs, and construction methods have the least significant detrimental impact to identified resources and functional values of other practicable and significantly different alternatives including alternatives outside the resource area of the environmental zone;**
- E.2. Proposed development locations, designs, and construction methods are less detrimental to identified resources and functional values than other practicable and significantly different alternatives;**

Findings: These criteria require the applicant to demonstrate that alternatives were considered during the design process, and that there are no practicable alternatives that would be less detrimental to the identified resources and functional values. The applicant provided a detailed alternatives analysis that can be found in the application case file in Exhibits A.1, A.3 and A.4, and was summarized earlier on pages 4 and 5.

Impacts of the proposed development are measured relative to the impacts associated with the development normally allowed by the base zone; in this case, the base zone allows 26,353 square feet of the site to be covered by buildings, according to Table 120-3 of the Zoning Code. The applicant proposes a multi-dwelling structure, which covers only 17,401 square feet of the site, which is consistent with base zone regulations.

The site is constrained by the draw running across the lower portion, the combined sewer main running parallel to the draw, and the steeply sloping topography. As listed on page 4, the applicant explored numerous alternatives. The main challenge with providing less disturbance area was the resulting reduction in density and the increased need for modifications to development standards.

The applicant explored numerous alternatives for the site, including other dimensions for the building, different structure types, and varying density. Other options are not practicable because they either result in too much disturbance to the site (Options 1-6) or the necessary modifications to development standards cannot meet the purpose of the regulation. Reducing the footprint too much increased the building height to an unacceptable height for this property (Option 9). The applicant's preferred alternative (Option 10) utilizes all the area below

street grade in order to reduce the visual impact and height of the structure while maintaining a minimal footprint.

Further, construction of a structure or road improvements entirely outside of the resource area is not practicable or feasible at this location because the site is entirely within the resource area of the environmental zone. The owner is in the process of completing a property line adjustment so that the majority of the proposed development can be located outside of the resource area.

To summarize, the applicant considered alternatives and identified an approach that minimizes the detrimental impacts on resources and associated functional values, consistent with allowing those uses generally permitted or allowed in the base zone without a land use review. *Therefore, these criteria are met.*

A.1.b. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;

E.3. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;

Findings: These approval criteria require the protection of resources outside of the proposed disturbance area from impacts related to the proposal, such as damage to vegetation, erosion of soils off the site, and downstream impacts to water quality and fish habitat from increased stormwater runoff and erosion off the site.

The applicant's proposed construction management plan (CMP) and mitigation plan are described on page 4 of this report. The Site Development Review Section of BDS has commented that the basic elements of the construction management plan (e.g., highly visible construction fencing, a workable erosion control plan, and tree protection) are acceptable, but that limits to disturbance may not be realistic. BDS Site Development recommends a 20-foot wide temporary disturbance area rather than the 10-foot shown on the CMP. The applicant has identified a 20-foot wide disturbance area on the Development Plan (Exhibit C.2), but this was not carried forward to the CMP. The CMP drawings have been updated to match the recommended disturbance area.

It is apparent that the applicant has carefully thought through the potential impacts of construction activities on the property. With the increased temporary disturbance area requested by BDS staff and accounted for on the Development Plan, the proposed CMP will provide protection for the resources and values in areas designated to be left undisturbed.

The Bureau of Environmental Services has indicated that the public combination sewer in this location can only accept a limited amount of additional flow. The applicant proposes a flow-through planter to manage stormwater runoff from the new building. While the planter is sized for the entire roof area, the applicant has also proposed a 7,418 square foot ecoroof as an additional flow control measure (Exhibits A.11 and C.5). BES has asked for a condition of approval requiring a flow-through planter sized for the entire roof area and an additional ecoroof area of at least 7,000 square feet in order to demonstrate that the new building will not adversely impact existing functional values.

To ensure protection of surrounding resources and prevention of erosion off of the site, BDS Site Development staff will also require a pre-construction meeting prior to any ground-disturbing activities on the site. Therefore, with conditions for a pre-construction meeting and stormwater facilities meeting the requirements of BES, *these criteria are met.*

A.1.c. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;

E.4. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;

Findings: The proposed mitigation plan is described on page 5 of this report. It is designed to offset approximately 15,000 square feet of permanent disturbance area (building and right-of-way) and 8,349 square feet of temporary disturbance area, and mitigate the removal of 28 trees in the resource area.

The Mitigation Plan has two parts: First, the plan will mitigate for the loss of resource that will be permanently removed by the building location. Secondly, the Mitigation Plan calls for removal of invasive species and plantings of native trees and shrubs within the environmental conservation zone, enhancing areas where there were non-native plantings, and those areas that already contain native plantings. All proposed plantings will be selected from the *Portland Native Plant List*.

The mitigation plan will compensate for impacts at the site for the following reasons:

- The mitigation area is more than twice the area of disturbance.
- All disturbance areas will be planted with native vegetation.
- The interface between the development and the onsite drainageway will be buffered with the mitigation plantings.
- The mitigation plantings will increase species diversity to improve wildlife habitat in areas that have minimal native vegetation.
- The plantings will provide assistance with pollution and nutrient retention and removal, sediment trapping and erosion control.

Mitigation plantings should be installed during the rainy season to avoid mortality of new plantings associated with Portland's summer drought climate. Surrounding invasive plants (such as Himalayan blackberry, English ivy, and bamboo) should be removed to prevent competition for light and water, with new native plantings. Plantings should be tagged in the field for easy inspection by monitoring workers and City inspectors.

The Bureau of Environmental Services has indicated that no deep-rooted vegetation is to be located within the boundaries of the public sewer easements on site. The mitigation plan currently shows several big leaf maples proposed within the sewer easement adjacent to the new building. These trees must be located elsewhere on the site, within the environmental conservation zone.

The proposed plantings on the Mitigation Plan will be installed and maintained under the regulations outlined in Section 33.248.040.A-D (Landscaping and Screening). A two-year monitoring report is proposed by the applicant as described on page 5 of this document, and will ensure survival of proposed mitigation plantings. Therefore, with conditions for submittal of the monitoring reports to City staff, to plant during Portland's rainy season, to remove invasive weeds near mitigation plantings, to flag mitigation plants in the field for easy identification, and to keep deep-rooted vegetation outside of the public sewer easements, *these criteria are met*.

A.1.d. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and

E.5. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and

A.1.e. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

E.6. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

Findings: Mitigation for significant detrimental impacts will be conducted on the same site as the proposed development. The applicant is a consultant. The property owner who owns the subject site will adhere to the environmental regulations and can ensure the success of the mitigation program. *These criteria are met.*

A.3. Roads, driveways, walkways, outfalls, and utilities;

A.3.a. The location, design, and construction method of any outfall or utility proposed within the resource area of an environmental protection zone has the least significant detrimental impact to the identified resources and functional values of other practicable alternatives including alternatives outside the resource area of the environmental protection zone;

Findings: No utilities or outfalls are proposed within the environmental protection zone. This criterion does not apply.

A.3.b. There will be no significant detrimental impact on water bodies for the migration, rearing, feeding, or spawning of fish; and

Findings: None of the drainages onsite have been identified as fish-bearing streams. Stormwater generated from this development will be treated via a flow-through stormwater planter prior to disposal in the combination pipe on site. Additionally, the applicant has proposed a 7,418 square foot ecoroof on the new development to provide additional flow control and impervious surface reduction. The applicant has provided a detailed stormwater analysis showing how the proposed development will comply with Portland's *Stormwater Management Manual* (Exhibit A.11). Furthermore, to the extent that approval criterion A.1.b. "There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed," is met, *this criterion is also met.*

A.3.c. Water bodies are crossed only when there are no practicable alternatives with fewer significant detrimental impacts.

Findings: No water bodies will be crossed by the proposed development. *This criterion does not apply.*

33.430.280 Modifications Which Will Better Meet Environmental Review Requirements
The review body may consider adjustments for site-related development standards as part of the environmental review process. These modifications are done as part of the environmental review process and are not required to go through the adjustment process. In order to approve these modifications, the review body must find that the development will result in greater protection of the resources and functional values identified on the site and will, on balance, be consistent with the purpose of the applicable regulations.

Findings: The applicant requested three modifications to site-related development standards with their application. The following site-related development standards must be modified in order to better protect the resources and functional values identified on the site:

1. **Building height.** Section 33.120.215 and Table 120-3 limit the height in the R2 zone to 40 feet. For sites where there is more than a 10-foot change in grade from the high side to the low side of the building, an additional 10 feet of height is granted through the measurement definition in Section 33.930.050. Nearly half of the building is 42.5 feet tall from the street to the top of the parapet. The middle portion of the proposed building is 57.5 feet tall from

the street to the top of the parapet. The mechanical enclosure extends another 10 feet to the top. Per Section 33.120.215.C.2, rooftop elevator mechanical equipment may extend up to 16 feet above the height limit. Stairwell enclosures and other rooftop mechanical equipment, which cumulatively covers no more than 10 percent of the roof area, may extend 10 feet above the height limit. From the finished grade south of the building to the top of the parapet is 119.5 feet, not including the above identified elevator and mechanical equipment.

The increase to the maximum height allows the footprint of the building to be minimized and the overall disturbance area reduced. As discussed earlier in this report, the applicant considered alternative development options, which included shorter buildings and multiple buildings options, but all options except the 7-story option (9) resulted in a greater amount of disturbance area and more tree removal. The preferred option is 22 feet shorter than Option 9 and provides a more reasonable building scale. The eight options with larger amounts of disturbance could lead to loss of wildlife habitat, impacts to the native forest microclimate, increased impervious surface, and a reduction in the retention of soils.

The height standards promote a reasonable building scale and relationship of one residence to another; promote options for privacy for neighboring properties; and reflect the general building scale of development in the City's neighborhoods. This site is quite isolated from the larger neighborhood. Privacy for neighboring properties will not be adversely impacted as all of the property to the west, east, and south is owned by the Oregon Department of Transportation (ODOT). The area to the north is in the same ownership. Driving or walking along SW Slavin Road, the proposed condominiums will be taller than abutting development, but the applicant has taken steps to design the building so that all levels of structured parking are tucked into the hillside, below the level of SW Slavin Road. This makes better use of the site than the existing multi-dwelling development with surface parking. In addition, the proposed building will be substantially below the view shed for Barbur Boulevard and Terwilliger Boulevard. The Interstate-5 right-of-way and existing vegetation will buffer the neighborhood to the east.

The existing topography and proposed mitigation plantings help promote privacy with the only abutting residential development. The location of the site – nestled at the end of a cul-de-sac and surrounded by ODOT right-of-way – aid in mitigating the impacts of the building's scale. The additional height requested, when balanced against the resource impacts, is consistent with the overall purpose of the development standard.

2. **Minimum building setback.** In the R2 zone, side and rear building setbacks are based upon the measurement of the area of the plane of the building wall abutting the property line. Section 33.120.220 and Table 120-4 require a variable setback that ranges from 5-14 feet. The proposed north side lot line jogs between the existing buildings and the proposed building. All of the existing buildings north of the property line require and are meeting the 5-foot setback. Different setbacks are required south of the property line, depending upon which wall plane is facing a particular section of property line. Where the property line runs roughly northwest to southeast, the proposed building maintains an 8-foot setback and at least 13-feet of separation from the nearest building. For the two sections of property line running generally southwest to northeast, the proposed building is generally 14-feet from the property line, but dips as close as 11 feet, see Exhibit C.2. The required setback for the new building is 14-feet from all sections of the north property line. The applicant has requested an 8-foot setback.

The purposes of the setback regulations are to:

- maintain light and air, separation for fire protection, and access for fire fighting;
- reflect the general building scale and placement of multi-dwelling development in the city's neighborhoods;
- promote a reasonable physical relationship between residences;
- promote options for privacy for neighboring properties;

- require larger front setbacks than side setback to promote open, visually pleasing front yards;
- provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity;
- along transit streets create an environment that is inviting to pedestrians and transit users.

Placing one taller building along SW Slavin Road allows for better access for fire protection/fire fighting and makes better use of the site's natural topography. This site does not require a minimum front setback, per Section 33.120.220.B.2.b, and placing the development along Slavin Road will not reduce privacy for neighboring properties. Privacy for the existing development is protected by designing the proposed development to have views facing away from the property line with the requested setback modification. The neighboring multi-dwelling development is constructed tightly together. This modification will continue the relationship of clustering development together, allowing an adequate setback from the drainageway crossing the site. The reduced setback to the north property line is, on balance, consistent with the purposes of the setback regulations and allows for less disturbance to the natural topography of the site. This in turn allows for less overall disturbance, less tree removal, and greater protection of the resources and functional values on the site.

3. **Overall building length.** Section 33.120.230 and Table 120-3 limit the maximum building length to 100 feet for the portion of the building located within 30 feet of a street lot line. The total proposed building length is 208 feet.

The purpose of the building length regulation is to limit the amount of bulk that can be placed close to the street. The standard assures that long building walls close to streets will be broken up into separate buildings. This will provide a feeling of transition from lower density development and help create the desired character of development in the multi-dwelling zones.

As previously noted, there is no minimum front setback for this site. In fact, the environmental standards encourage development to locate close to the street to limit impacts to environmental resources. The proposal includes architectural relief along the façade that effectively provides for a maximum length of 78 feet of uninterrupted façade. The building's relative isolation essentially eliminates the need for the "feeling of transition between densities," since no transition exists in this instance.

As described earlier in this report, significant consideration was given to alternative designs on this site. The applicant has worked hard to reduce the footprint, avoid the natural drainageway, and work with the natural topography of the site. Overall, the applicant's proposal will result in greater protection of the resources and functional values identified on the site and will, on balance, be consistent with the purposes of the applicable regulations. Therefore, this criterion is met.

DEVELOPMENT STANDARDS

General Information about Development Standards and Approval Criteria. The Zoning Code contains two types of regulations: Development standards and Approval criteria.

Approval criteria, such as those listed earlier in this report, are administered through a land use review process. Approval criteria are regulations where the decision-maker must exercise discretion to determine if the regulation is met. Public notice is provided and public comments received that address the approval criteria are addressed in the decision.

Development Standards: Development standards are clear and objective regulations (for example: building setbacks; number of required parking spaces; and maximum floor area). Compliance with development standards is reviewed as part of the administrative permitting process and are not considered to be discretionary reviews. Development standards that are not relevant to the land use review, have not been addressed in the review, but will have to be met at the time that the site is developed.

Standards that apply to the proposed development. In this case, there are several Zoning Code standards that apply to the proposed development. The standards of Section 33.430.140 General Development Standards for Environmental Zones apply to the proposal. The following standards continue to apply at the time of development:

- All vegetation planted in a resource area is native and listed on the Portland Plant List. Plants listed on the Portland Nuisance Plant List or Prohibited Plant List are prohibited (33.430.140.L)
- The minimum front, street, or garage setbacks of the base zone may be reduced to any distance between the base zone minimum and zero (33.430.140.M).
- Fences are allowed only within the approved permanent disturbance area (33.430.140.O).
- Exterior lights must be spaced at least 25 feet apart. Incandescent lights exceeding 200 watts (or other light types exceeding the brightness of a 200-watt incandescent light) must be placed so they do not shine directly into resource areas (33.430.140.Q).

CONCLUSIONS

The applicant proposes to construct a new multi-story condominium development, with a building footprint of 17,402 square feet, at the front lot line of a vacant parcel along SW Slavin Road. A portion of the building footprint and right-of-way improvements are located in the resource area of the Environmental Conservation overlay zones. The applicant will minimize impacts on environmental resources by developing the structure in an extremely small footprint with below grade parking. Modifications to height, side setbacks, and building length still result in a building consistent with the base zoning at street level. The impacts will be mitigated by the removal of invasive species, planting of 64 native trees and 171 native shrubs throughout the ownership, and installation of an ecoroof over a portion of the new building.

The applicant has shown that the proposal meets the applicable approval criteria. Therefore, this proposal should be approved, subject to the following conditions.

ADMINISTRATIVE DECISION

Approval of an Environmental Review for a new multi-dwelling development, street improvements, and a stormwater management facility partially located within the Environmental Conservation Overlay Zone; and

Approval of Environmental Modifications to:

- Increase the maximum building height to 109.5 feet (33.120.215);
- Reduce the minimum setback to 8-14 feet per Exhibit C.2 (33.120.220); and
- Increase the maximum building length to 208 feet (33.120.230)

as illustrated with Exhibits C.2-C.5 and subject to the following conditions:

- A. All permits:** Copies of the stamped Exhibits C.2-C.5 from LU 08-104913 ENM and Conditions of Approval listed below, shall be included within all plan sets submitted for permits (building, grading, Site Development, erosion control, etc.). These exhibits shall be included on a sheet that is the same size as the plans submitted for the permit and shall include the following statement, ***"Any field changes shall be in substantial conformance with approved Exhibits C.2 through C.5."***

- B. An on-site meeting between the applicant, the contractor, and City staff** is required prior to any ground disturbing activity. Condition 1 below shall be completed prior to the scheduled meeting, and the following conditions shall be shown on all permit plans:
1. Temporary construction fencing (four feet high) shall be installed according to Section 33.248.068 (Tree Protection Requirements), except as noted below. Construction fencing shall be placed along the Limits of Construction Disturbance for the approved development, as depicted on Exhibit C.3 Construction Management Plan or as required by inspection staff during the plan review and/or inspection stages.
 2. No mechanized construction vehicles are permitted outside of the approved "Limits of Construction Disturbance" delineated by the temporary construction fence. All planting work, invasive vegetation removal, and other work to be done outside the Limits of Construction Disturbance, shall be conducted using hand held equipment.
 3. A registered professional engineer, other professional certified by the state with experience in preparing erosion control plans, or a registered Certified Professional in Erosion and Sediment Control (CPESC) who prepares and implements erosion control plans, shall prepare the required erosion control plan, which shall meet the requirements of the Site Development section of BDS.
- C.** The building permit must meet the BES requirement for an appropriately sized flow-through planter and include an additional ecoroof area of at least 7,000 square feet.
- D.** A total of **64 trees, 171 shrubs, and 1440 native ground cover plants**, selected from the Portland Plant List, shall be planted, in substantial conformance with Exhibit C.4 Mitigation Plan.
1. Plantings shall be installed between October 1 and March 31 (the planting season).
 2. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings, using handheld equipment.
 3. All mitigation and remediation shrubs and trees shall be marked in the field by a tag attached to the top of the plant for easy identification by the Landscape Professional. All tape shall be a contrasting color that is easily seen and identified.
 4. The applicant shall have a registered landscape architect, a registered landscape contractor, or the designer of record certify that all the required mitigation plantings were installed as required. After installation, the applicant shall submit a Landscape Certification Form to this effect, signed by the registered landscape professional. The signed Landscape Certification Form shall be submitted to the Site Development Section of the Bureau of Development Services, confirming that all required mitigation plantings have been installed in accordance with these conditions of approval.
 5. No deep-rooted vegetation (trees and large shrubs) is to be installed within the public sewer easements on site.
- E. An inspection of Permanent Erosion Control Measures** shall be required to document installation of the required mitigation plantings.
1. The **Permanent Erosion Control Measures** inspection (IVR 210) shall not be approved until the required mitigation plantings have been installed (as described in Condition D above);
- OR--
2. If the **Permanent Erosion Control Measures** inspection (IVR 210) occurs outside the planting season (as described in Condition D above), then the Permanent Erosion Control Measures inspection may be approved prior to installation of the required mitigation plantings – if the applicant obtains a separate **Zoning Permit** for the purpose of ensuring an inspection of the required mitigation plantings by March 31 of the

following year.

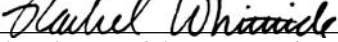
F. The land owner or the owner's landscape professional shall monitor the required plantings for two years to ensure survival and replacement as described below. The land owner is responsible for ongoing survival of required plantings beyond the designated two-year monitoring period. The landowner or landscape professional shall:

1. Provide a minimum of two letters (to serve as monitoring and maintenance reports) to the South Portland Neighborhood Association, and to the Land Use Services Division of the Bureau of Development Services (Attention: Environmental Review LU 08-104913 ENM) containing the monitoring information described below. Submit the first letter within 12 months following approval of the Permanent Erosion Control Inspection of the required mitigation plantings. Submit subsequent letters every 12 months following the date of the first monitoring letter. All letters shall contain the following information:
 - a. A count of the number of planted trees that have died. One replacement tree must be planted for each dead tree (replacement must occur within one planting season).
 - b. The percent coverage of native shrubs and ground covers. If less than 80 percent of the mitigation planting area is covered with native shrubs or groundcovers at the time of the annual count, additional shrubs and groundcovers shall be planted to reach 80 percent cover (replacement must occur within one planting season).
 - c. A list of replacement plants that were installed.
 - d. Photographs of the mitigation area and a site plan, in conformance with approved Exhibit C.4 Proposed Mitigation Plan, showing the location and direction of photos.
 - e. A description of the method used and the frequency for watering mitigation trees, shrubs, and groundcovers for the first two summers after planting. All irrigation systems shall be temporary and above-ground.
 - f. An estimate of percent cover of invasive species (English ivy, Himalayan blackberry, reed canarygrass, teasel, clematis) within 10 feet of all plantings. Invasive species must not exceed 20 percent cover during the monitoring period.

G. Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33.700.040 and /or enforcement of these conditions in any manner authorized by law.

Note: In addition to the requirements of the Zoning Code, all uses and development must comply with other applicable City, regional, state and federal regulations.

This decision applies to only the City's environmental regulations. Activities which the City regulates through PCC 33.430 may also be regulated by other agencies. In cases of overlapping City, Special District, Regional, State, or Federal regulations, the more stringent regulations will control. City approval does not imply approval by other agencies.

Decision rendered by:  **on December 15, 2008**
By authority of the Director of the Bureau of Development Services

Decision mailed: December 18, 2008

Staff Planner: Rachel Whiteside

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on January 25, 2008, and was determined to be complete on April 9, 2008.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on January 25, 2008.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case the applicant requested that the 120-day review period be extended several times, as stated with Exhibit A.12.

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on January 2, 2009** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. Recognized neighborhood associations are not subject to the appeal fee. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at

550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **January 5, 2009 – (the first business day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

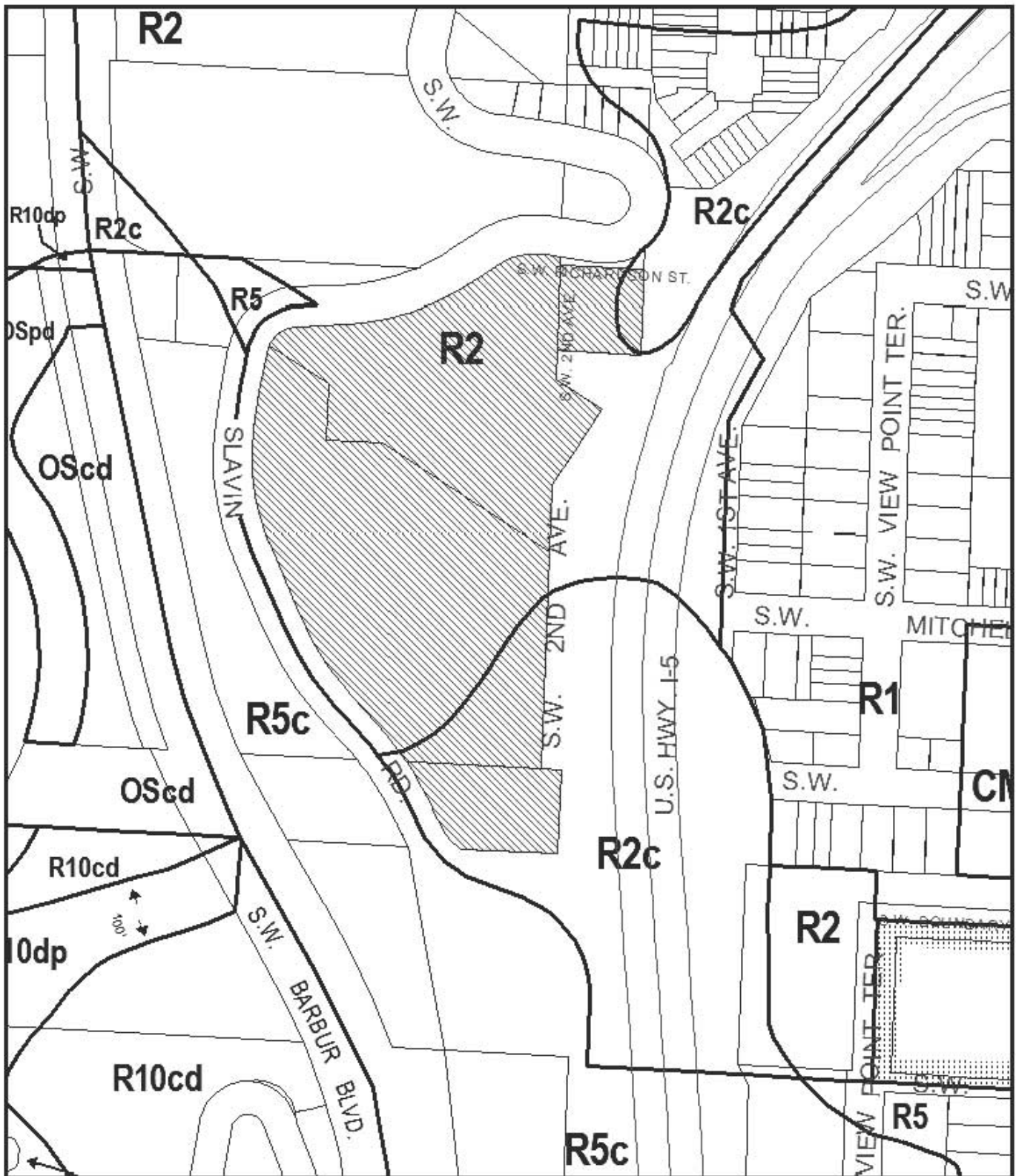
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original Narrative
 - 2. Geotechnical Assessment
 - 3. Revised Narrative, dated February 12, 2008
 - 4. Revised Narrative, dated March 17, 2008
 - 5. Additional Geotechnical Information, dated May 9, 2008
 - 6. Stormwater Analysis, received June 2, 2008
 - 7. Additional Stormwater Analysis, received June 10, 2008
 - 8. Conceptual Storm Drainage Calculations, received September 19, 2008
 - 9. Conceptual Storm Drainage Calculations, received October 24, 2008
 - 10. Addition to Narrative, dated December 10, 2008
 - 11. Conceptual Storm Drainage Calculations, received December 10, 2008
 - 12. Extensions of the 120-day Review Timeline
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Existing Conditions
 - 2. Proposed Development Plan (attached)
 - 3. Construction Management Plan (attached)
 - 4. Mitigation Plan (attached)
 - 5. Elevation Drawings (attached)
 - 6. Property Line Adjustment Plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Review Section of BDS
 - 7. Bureau of Parks, Forestry Division
 - 8. Site Development Review Section of BDS, Revised Response May 15, 2008
 - 9. Bureau of Environmental Services, Revised Response December 11, 2008
- F. Correspondence:
 - 1. South Portland Neighborhood Association, Letter received May 2, 2008, objecting to the proposal
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. EA Appointment Summary
 - 4. Incomplete Letter, Sent January 31, 2008

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING

 Site

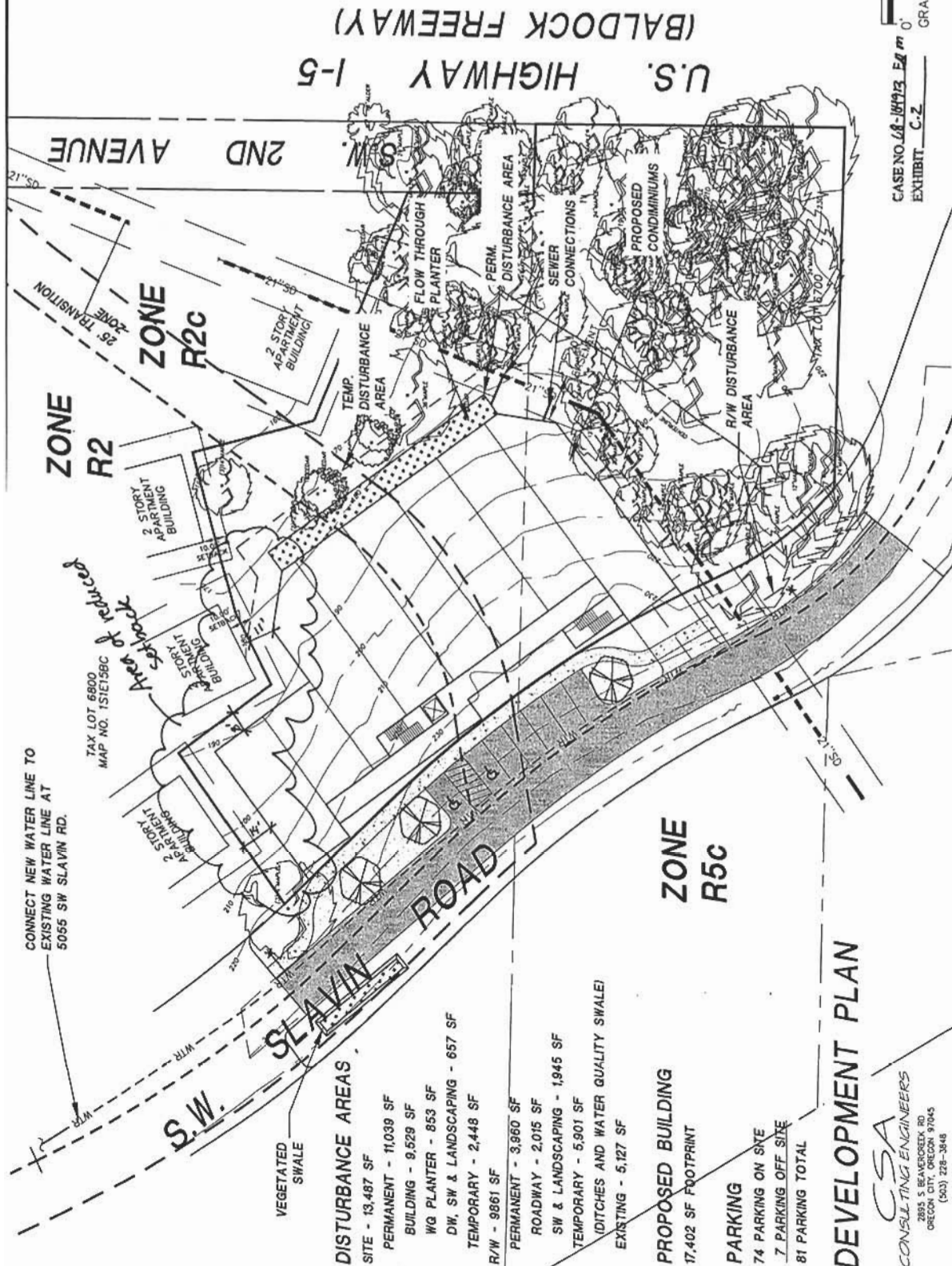


File No.	LU 08-104913 ENM
1/4 Section	3529
Scale	1 inch = 200 feet
State Id	1S1E15BC 6800
Exhibit	B (Feb 11, 2008)



CASE NO. 18-10193 Edm
EXHIBIT C-2

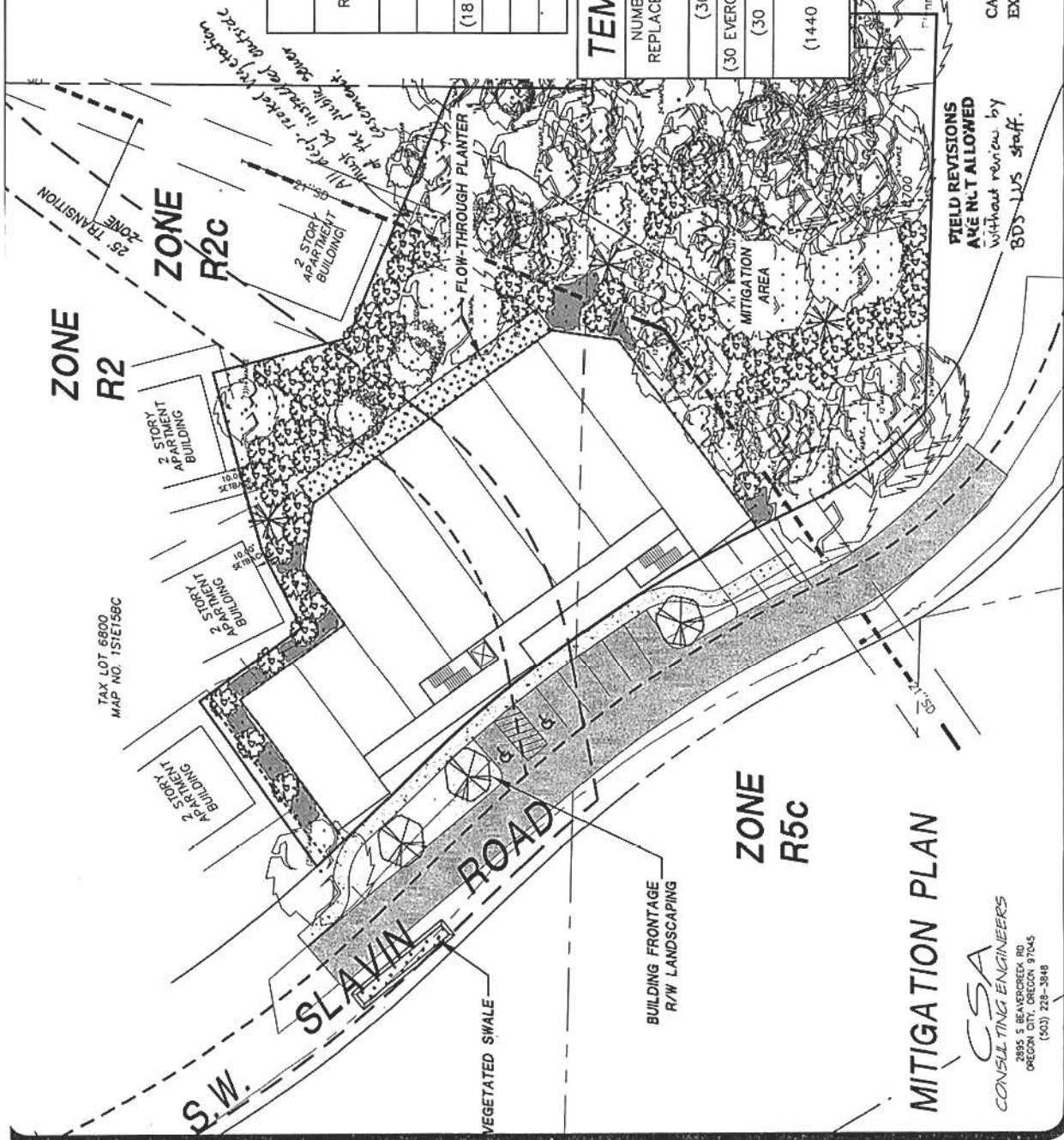
0' 40' 80'
GRAPHICAL SCALE IN FEET
SCALE: 1:40



LEGEND	
NEW TREES TO BE PLANTED	NUMBER & TYPE OF TREE
	61 BIG LEAF MAPLE
	3 WESTERN RED CEDAR
	SHRUBS

MITIGATION AREA		
NUMBER & TYPE OF REPLACEMENT TREES AND (SHRUBS)	SIZE OF REPLACEMENT PLANTS	SPACING OF PLANTS
3 WESTERN RED CEDAR	TREE SEEDLINGS AT LEAST 1IN. CALIPER	TREES WILL BE PLANTED A MINIMUM OF 10 FT. ON CENTER
61 BIG LEAF MAPLE		
(18 EVERGREEN HUCKLEBERRY)		
(15 RED CURRANT)		
(28 VIBURNUM)		
(20 VINE MAPLE)		
	SHRUBS IN AT LEAST A 2 GALLON BUCKET	SHRUBS WILL BE PLANTED 3 PLANTS PER 10 SQ. FT.

TEMPORARY MITIGATION AREA		
NUMBER & TYPE OF REPLACEMENT TREES AND (SHRUBS)	SIZE OF REPLACEMENT PLANTS	SPACING OF PLANTS
(30 VIBURNUM)		
(30 EVERGREEN HUCKLEBERRY)		
(30 RED CURRANT)		
(1440 GROUND COVER)		
	SHRUBS IN AT LEAST A 1 GALLON CONTAINER	SHRUBS WILL BE PLANTED 3 PLANTS PER 10 SQ. FT.
	GROUND COVER IN AT LEAST A 4IN. POT	GROUND COVER WILL BE PLANTED 8 PLANTS PER 10 SQ. FT.



City of Portland - Bureau of Development Services
 LU # 08-704915 ENR1

Date 12/15/08
 Approved for Environmental Review only. Not a building permit.
 Additional zoning requirements may apply.
 CASE NO. 08-0913 ENR1
 EXHIBIT C-4
 GRAPHICAL SCALE IN FEET
 SCALE: 1:40

FIELD REVISIONS
 ARE NOT ALLOWED
 without review by
 BDS LVS staff.

MITIGATION PLAN

CSA
 CONSULTING ENGINEERS
 2895 S BEAVERCREEK RD
 OREGON CITY, OREGON 97045
 (503) 228-3848



WEST ELEVATION
N.T.S.



2 NORTH ELEVATION N.I.S



3 SOUTH ELEVATION N.T.S.



EAST ELEVATION

approval for modification to increase max. height to 9.5'. Elevations are conceptual only.

CSA
CONSULTING ENGINEERS
2895 S BEAVERCREEK RD
OREGON CITY, OREGON 97045
(503) 228-3848

CASE NO. 18-164913 E.d.m
EXHIBIT C-5